

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**EDWARD E. GEMMILL**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO.1:05CV 692 LTS-RHW**

**STATE FARM FIRE AND CASUALTY COMPANY**

**DEFENDANT**

**Instruction C-1**

The plaintiff has met his initial burden of proving that he suffered an accidental direct physical loss of his dwelling and its contents during a windstorm, a peril that is covered under his State Farm homeowners policy. However, his State Farm policy provides that windstorm losses caused by storm surge flooding are an exception to this coverage.

State Farm has the burden of proving, by a preponderance of the evidence, what portion of the plaintiff's windstorm losses were caused by storm surge flooding, and to the extent State Farm meets its burden of proof, it does not owe the plaintiff policy benefits for the losses caused by storm surge flooding.

By paying the plaintiff \$5,746, State Farm has admitted that at least this amount of damage to the roof of the plaintiff's dwelling was not caused by storm surge flooding.

Conversely, by accepting payment of \$128,100 in benefits under his flood policy, the plaintiff has admitted that at least this amount of his loss was caused by storm surge flooding.

Based on the evidence you have heard, it will be up to you to decide what amount of structural damage, if any, above the \$128,100 paid under the flood policy was caused by storm surge flooding, and on this issue State Farm has the burden of proof. To the extent you conclude that State Farm has met this burden of proof, State Farm does not owe the plaintiff any of the additional damage caused by storm surge flooding.

Plaintiff has established, as a matter of law, that the value of his dwelling was \$217,813. State Farm accepted this valuation in adjusting and paying the plaintiff's claim under his flood policy. Plaintiff has offered uncontradicted evidence that the value of the contents he lost was at least equal to the contents coverage under his homeowners policy, \$107,080.

Based on the evidence you have heard, it will be up to you to decide what amount of this contents loss, if any, was caused by storm surge flooding, and on this issue State Farm has the burden of proof. To the extent you conclude that State Farm has met this burden of proof, State Farm does not owe the plaintiff any of the damages to the plaintiff's personal property caused by storm surge flooding.

The maximum that you may award for the loss of the plaintiff's dwelling is \$83,967. This is the difference between the value of the plaintiff's dwelling (\$217,813) and the payment the plaintiff has already received in the form of flood insurance benefits (\$128,100) and the amount State Farm tendered under its policy (\$5,746). The minimum you may award is \$0.

The maximum that you may award for the loss of the contents of the plaintiff's dwelling is \$107,080, the insured value of the contents. The minimum you may award is \$0.

You have heard conflicting testimony concerning the events that occurred during Hurricane Katrina, and it will be up to you to decide what evidence you find more persuasive. You are the finders of fact, and it is your duty as jurors to impartially evaluate the evidence you have heard and decide what you believe happened at the plaintiff's residence during Hurricane Katrina and whether the plaintiff's losses were more likely than not caused by wind or by storm surge flooding. Your verdict should reflect your conclusions.